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June 26, 2006

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: D.T.E. 04-33 – Petition of Verizon New England Inc. for Arbitration

Dear Secretary Cottrell:

Enclosed for filing in the above-reference docket is the Reply of Verizon Massachusetts In Support of its Compliance Tariff.

Thank you for your attention in this matter.

Sincerely,

Alexander W. Moore

cc: Service List

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	**D.T.E. 04-33**

REPLY OF VERIZON MASSACHUSETTS IN SUPPORT OF ITS COMPLIANCE TARIFF

INTRODUCTION

RCN, CTC, Conversent and Covad submitted limited comments on the compliance tariff filed by Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon") on June 8, 2006. RCN seeks to add language concerning interconnection arrangements under Section 251(c)(2) of the TelAct, but the Department already rejected RCN's position its July 14, 2005 Arbitration Order. *See* Part I below. CTC erroneously argues that Verizon's compliance tariff filing conflicts with the filed-rate doctrine and violates retroactive rate-making principles. CTC's argument has no merit and in any event offers no basis for CTC's request for yet another extension of the deadline (originally August 13, 2005) for CLECs to re-certify that their existing EELs comply with the FCC's eligibility criteria. *See* Part II below. Conversent's and Covad's comments for the most part raise only minor concerns with Verizon's filing, and Verizon proposes herein modifications to the tariff language that should satisfy those concerns. *See* Part III.B below. The sole exception is Conversent's assertion that the tariff provisions governing

commingling should include a reference to "other applicable law," which is inappropriate to include in the tariff for the reasons stated in Part III.A below.

PART I

RCN claims that Verizon's compliance tariff must be modified because it "fails to assure the rights of CLECs to interconnection facilities . . . under Section 251(c)(2) of the Telecommunications Act as interpreted by the FCC in the *TRO* and *TRRO*.[1] The Department, however, has already rejected this argument. The CLECs argued in the main case that the Amendment should reflect that interconnection facilities established for transmission and routing of telephone exchange and exchange access services are available to CLECs at TELRIC pricing. *See* Arbitration Order, D.T.E. 04-33, issued July 14, 2005, at 223. The Department determined, however, that nothing in the *TRO* or *TRRO* altered the FCC's prior determinations concerning interconnection facilities:

> The FCC made no findings, clarifications, or statements in the Triennial Review Order or Triennial Review Remand Order that changed the parties' pre-existing rights and responsibilities concerning interconnection facilities. As no change resulted from the Triennial Review Order or Triennial Review Remand Order, it is unnecessary for the parties to amend their agreements with respect to interconnection facilities.

Id., at 224. Thus, it is also unnecessary for Verizon to amend its tariff with respect to interconnection facilities.

Nonetheless, Verizon is not opposed to inserting language in the tariff, consistent with the Department's Arbitration Order and § 3.5.4 of the Amendment, clarifying that

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[1] As a preliminary matter, RCN completely misreads Verizon MA's Tariff No. 17. In citing Part C Section 1.5.1.A.2 of DTE No. 17, *see* RCN Comments at 4, RCN mistakenly believes that Verizon's changes which limit access to unbundled dedicated transport under Part B of the tariff adversely impacts RCN's ability to obtain interconnection under Part C of the tariff. RCN relies on the following language in Part C Section 1.5.1.A.2 in support of its argument: "Transport will be provided ... under the terms and conditions of the applicable Telephone Company tariff." Contrary to RCN's belief, the transport arrangements referenced in this section are provided under Verizon's applicable intrastate or interstate access tariffs, not under Part B of DTE No. 17. Part C of the tariff remains unchanged by this compliance filing.

the FCC's finding of non-impairment for entrance facilities did not alter the FCC's prior determinations concerning interconnection facilities. Accordingly, Verizon proposes to add the following sentence at the end of Part B Section 2.2.2.A.2 (Entrance Facility):

> The discontinuation of such unbundled entrance facilities does not alter either the Telephone Company's or the TC's pre-existing rights and responsibilities concerning interconnection facilities under section 251(c)(2) of the Act.

PART II

CTC argues that the Department should require Verizon to modify Part B Section 13.3.1.A of its compliance filing which requires that CLECs must re-certify by January 15, 2006 that their existing EEL circuits satisfy the TRO's eligibility criteria.[2] CTC bases its argument on a belief that this provision equates to retroactive ratemaking and also violates the Filed Rate Doctrine.

CTC is the last CLEC that should be questioning the Department's determination as to the effective date of the EEL recertification requirements. The Department initially approved Verizon's proposal that CLECs must re-certify existing EELs as compliant with the new eligibility criteria "within 30 days of the Amendment Effective date." Arbitration Order, at 129-130. Because the effective date of the Amendment is July 14, 2005,[3] the original deadline for CLECs to re-certify existing EELs was August 13, 2005. CTC subsequently moved for reconsideration of the Department's rulings on re-certification. The Department denied that request but did grant CTC's alternative request to extend the re-certification deadline to 30 days from the date of the Department's Reconsideration Order, December 16, 2005, thus extending

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2 CTC also urges the Department to not permit any aspects of Verizon's compliance tariff to go into effect that potentially would be impacted by a FCC decision on a pending XO, *et al,*. forbearance petition. This issue is moot since the petitioners withdrew their Petition for Forbearance in WC Docket No. 05-170 on June 23, 2006.

3 *See* Arbitration Order at 189, stating that the Amendment is effective as of the date of the Order.

the re-certification deadline to January 15, 2006. As directed by the Department to file a compliance tariff consistent with its orders in this proceeding, Verizon's tariff filing properly requires CLECs to re-certify existing EELs by January 15, 2005, and it should be approved.

CTC disingenuously argues that "some CLECs" may be surprised that they are required to pay non-TELRIC access rates for former EELs which they have failed to re-certify in timely fashion. Given the well-litigated history of the issue and the Department's clear rulings, the CLECs (CTC chief among them) have had more than ample notice of the consequences of a failure to re-certify by the deadline. CTC, moreover, has offered no excuse for its own apparent failure to re-certify its existing EELs, and should be given no quarter at this late date.

Second, CTC's claim that Verizon's compliance tariff "conflicts with the filed-rate doctrine and the long-standing Massachusetts prohibition against retroactive rate-making" is wrong on the law. Contrary to CTC's assertions, Verizon has not proposed new rates in its tariff compliance filing nor proposed applying its tariff rates retroactively. Rather, Verizon is merely implementing the rulings made by the Department in this proceeding. As noted above, the Department has ruled that the Amendment is effective as of July 14, 2005, and that CLECs must re-certify their embedded base EELs as of January 15, 2006 or those EELs will be treated as noncompliant with the TRO's eligibility requirements and re-priced to the applicable rate for an analogous access service. As CTC would have it, those rulings should be limited to CLECs that execute the Amendment, and that CLECs that purchase EELs out of the tariff should be allowed yet another extension in which to re-certify and should not be subject to non-TELRIC rates until some time in the future. CTC's proposal for preferential treatment for CLECs that purchase out of the tariff has no basis in fact, is not good policy, and is contrary to the Department's orders in this proceeding. Indeed, by directing Verizon to file a compliance tariff consistent with those

orders, the Department indicated its preference for uniform treatment of this issue. The Department should reject CTC's request for special treatment here.[4]

PART III

A. There is No Other Applicable Law that applies to the tariff.

Conversent argues that the compliance filing should have included a reference to "other applicable law" as one of the authorities under which a CLEC may obtain access to a UNE that is commingled with a wholesale service. As support for its argument, Conversent references a May 24, 2006 conference call among Staff and the parties after which the parties added such language to the Amendment. *Conversent* at 8.

This is one area, however, where language included in a contract between the parties – the Amendment – is not appropriate to include in the tariff, for several reasons. First, the scope of the tariff is limited to the requirements under Section 251 of the Telecommunications Act. Specifically, Part A, Section 1.4.1.A of the tariff (titled "Scope") provides:

> This tariff sets forth the terms, conditions, and pricing under which the Telephone Company offers to provide to any requesting CLEC, pursuant to Section 251 of the Act, interconnection, access to network elements, and ancillary telecommunications services available within each LATA in which such CLECs operate within the Commonwealth of Massachusetts. The services contained herein are in addition to those being provided and/or available on an individual contract basis between the Telephone Company and the CLEC.

Further Part B, Section 1.1.1.A.1 provides, in part, that:

> Notwithstanding any other provision of this tariff, the Telephone Company shall be obligated to provide access to UNEs, combinations of UNEs ("Combinations"), or UNEs commingled with wholesale services ("Commingling") under the terms of this tariff in accordance with 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.

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[4] In any event, CTC has an interconnection agreement with Verizon that includes terms and conditions for access to EEL circuits on an unbundled basis. Therefore, CTC may not order EELs under the terms of DTE Tariff No. 17. *See* Department Order dated March 24, 2000 in Docket D.T.E. 98-57 at 19.) Accordingly, CTC lacks standing to object to the terms of Verizon's compliance tariff.

> In accordance with U.S.C. Section 251(c)(3) and 47 C.F.R. Part 51, the Telephone Company will allow the commingling of a UNE or a combination of UNEs obtained under this tariff with wholesale service obtained under a Telephone Company access tariff or separate non-Section 251 agreement, where the provision of such UNE (or combination of UNEs) is required. Moreover, in accordance with 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, the Telephone Company shall, upon request of the TC, perform the functions necessary to commingle or combine UNEs with wholesale services.

Thus, the tariff does not purport to apply to services available under any law other than Section 251 of the Act, and it would be anomalous to expand one particular aspect of the tariff to cover "other applicable law."

Moreover, the Department allowed CLECs to use the phrase "other applicable law" in the Amendment for a variety of reasons, including (1) the Department's wish to preserve its purported ability to mandate UNEs where FCC has not ruled on impairment with respect to a given network element; (2) the Department's conclusion that language limiting the Amendment strictly to § 251 of the Act and relevant FCC regulations was not necessary in order to implement the TRO and TRRO; and (3) the fact that many interconnection agreements already refer to "Applicable Law." *See* Arbitration Order at 44-45.

This analysis, however, has no application to the tariff. The tariff does not already include reference to "other applicable law," and as noted above is expressly limited in scope to § 251 of the Act. Second, adding the term "other applicable law" to the tariff is in no way necessary in order to implement the *TRO* and the *TRRO*, which are by their very nature limited in scope to implementation of the Act alone. Third, the wording of the tariff has no effect on the Department's ability to render decisions in the future.

Finally, Conversent's proposal is inconsistent with the purpose and nature of the tariff. The tariff is intended to state the terms, conditions and rates on which certain services are

currently available from Verizon. The fact remains that, aside from § 251 and the relevant FCC regulations, there *is* no "other law" that requires Verizon to provide unbundled access to network elements. Certainly, in the long course of this proceeding, the CLECs have never identified any such law. Thus, inserting the phrase "other applicable law" into the tariff would render the tariff vague and confusing, contrary to its purpose to provide a clear statement of services currently available. If at any point, a CLEC identifies new or existing law that possibly should be addressed in the tariff, then the Department can undertake a proceeding at that time to amend the tariff accordingly. The tariff should not anticipate future changes in the law that might impact commingling.

B. Verizon Proposed Tariff Revisions

Conversent's comments, which assert that the compliance filing "[i]n significant respects . . . fails to reflect Department's rulings in the various orders in this case," are unfounded and largely an exercise in hyperbole. Verizon's tariff filing complies in all material respects with the various orders in this proceeding. Rather than debating the minor issues on which Conversent focuses, Verizon proposes the following modifications to the tariff language.[5]

1. Audits of EEL Eligibility Criteria

Verizon proposes to modify Part B, Section 13.4.1.E.3 as follows:

> To the extent the independent auditor's report concludes ~~In the event that an audit reveals~~ that the CLEC failed to comply in all material respects with the service eligibility criteria set forth in Section 13.1.1.D for any DS1 or DS1 equivalent circuit, the CLEC shall reimburse the Telephone Company for the cost of the independent auditor within thirty (30) days after receiving a statement of such costs from the Telephone Company. Proof of cost shall be the bills submitted to the Telephone Company by the independent auditor in adequate detail. In addition, the CLEC must true-up any difference in

5 These modifications in no way represent an admission by Verizon that its June 8, 2006 tariff filing is defective in any manner.

payments, convert all noncompliant circuits to the appropriate service, and make the correct payments on a going-forward basis.

Verizon proposes to modify Part B, Section 13.4.1.E.4 as follows:

In the event that the independent auditor's report concludes reveals that the CLEC complied in all material respects with the eligibility criteria set forth in Section 13.1.1.D, the CLEC shall provide the independent auditor for verification a statement of the CLEC's reasonable and verifiable ~~out-of-pocket~~ costs of complying with any requests of the independent auditor. The Telephone Company will, within sixty (60) days of the date on which the CLEC submits such costs to the independent auditor, reimburse the CLEC for its reasonable and verifiable ~~out-of-pocket~~ costs verified by the independent auditor. In the case where such reimbursement is required, the CLEC must provide documentation supporting its submitted costs (i.e., staff time for collecting data and participating in interviews, staff wage rates.)

2. Rates that Apply if an EEL Becomes Non-Compliant

Verizon proposes to modify Part B, Section 13.3.1.B as follows:

If a circuit is or becomes noncompliant as described in Section 13.3.1.A above, and the CLEC has not submitted an LSR or ASR, as appropriate, to the Telephone Company requesting disconnection of the noncompliant facility and has not separately secured from the Telephone Company an alternative arrangement to replace the noncompliant circuit, then the Telephone Company shall reprice the subject circuit, effective beginning on the date on which the circuit became non-compliant, by application of a new rate (or, by application of a surcharge to an existing rate) to be equivalent to an analogous access service or other analogous arrangement that the Telephone Company shall identify in a written notice to CLEC. The new rate shall be no greater than the lowest rate the CLEC could have otherwise obtained for an analogous access service or other analogous arrangement.

3. Charges that Apply if Verizon Prevails in a "Provision-then-Dispute Situation

Verizon proposes to modify Part B, Sections 2.1.1.D.2, 2.1.1.E.1, 5.3.1.D.2, and 5.3.1.E.1 by adding the following sentence to the end of each section: "Late charges shall not apply to any back-billed amounts."

4. Rates for Dark Fiber When Verizon Prevails in a "Provision-then-Dispute Situation

Verizon proposes to modify Part B, Section 17.1.1.E.1 as follows:

If it is determined, after completion of the applicable dispute resolution process, that the TC was not entitled to unbundled access to such element, then the Telephone Company may reprice the facilities in question on a going-forward basis and, if the Telephone Company notified the TC of the dispute within 30 days of receipt of the TC's order, backbill the TC to the date on which the element was first provisioned, in the amount of the difference between the rate applicable to unbundled access to the network element in question and the lowest rate that the TC could have~~would~~ otherwise ~~be~~ obtained for an analogous arrangement had the TC not ordered such arrangement as a UNE~~charged for the use of that element~~, plus carrying charges, such as interest on such amount.

5. Use of the Term "Fiber to the Premises"

Verizon proposes to modify Part B, Section 5.0.1.A as follows:

Pursuant to the Federal Communication Commission's Report and Order and Order on Remand and Further Notice of Proposed Rulemaking released on August 21, 2003 in CC Docket Nos. 01-338, 96-98, and 98-147 (the *"Triennial Review Order"*), and its Order on Reconsideration released October 18, 2004 in CC Docket Nos. 01-338, 96-98, and 98-147 (the "Triennial Review FTTC Reconsideration Order"), and notwithstanding any other provision of this tariff, the Telephone Company shall not be obligated to provide access to a fiber to the ~~premises~~ home (FTTH) loop (or any segment thereof), fiber to the curb (FTTC) loop (or any segment thereof), or hybrid loop (as those terms are defined by said FCC orders) on an unbundled basis except in accordance with, but only to the extent required by, 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.

6. Routine Network Modifications

Verizon proposes to modify Part M, Section 1.3.1 as follows to make explicit that the Department-approved rates for removal of load coils or bridged tap apply to DS-0 loops only and

that rates for removing load coils or bridged tap on DS-1 loops are still to be determined:

	Removal of Load Coils (over 18,000 feet)	NRC - Per DS0 link	632.01	
		NRC - Per DS0 Link – Expedited	959.15	
	Removal of Load Coils (over 18,000 feet)	NRC - Per DS1 link NRC - Per DS1 Link – Expedited	TBD TBD	
	Removal of One Bridged Tap	NRC - Per DS0 link	142.17	
		NRC - Per DS0 Link – Expedited	215.03	
	Removal of One Bridged Tap	NRC - Per DS1 link NRC - Per DS1 Link – Expedited	TBD TBD	
	Removal of Multiple Bridged Taps	NRC - Per DS0 link	343.17	
		NRC - Per DS0 Link – Expedited	519.80	
	Removal of Multiple Bridged Taps	NRC - Per DS1 link NRC - Per DS1 Link - Expedited	TBD TBD	

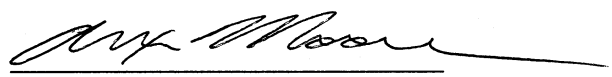
III. CONCLUSION

The Department should adopt Verizon's proposed amendments to the tariff and reject the claims of the parties as set forth herein.

Respectfully submitted,

VERIZON MASSACHUSETTS

By its attorneys



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